

Serial No. 10/613,818

Atty. Docket No. AH/LeA 33 017D1

REMARKS

Applicants respectfully request reconsideration and reexamination of the present application in light of the amendments and the remarks below.

Claims 13-16 and 18 are pending in this application.

Priority

The specification has been amended to clarify the priority of this pending application.

Rejection Under 35 U.S.C. § 102

The Examiner rejected claims 13-16 and 18 under 35 U.S.C. § 102(f) as being anticipated by U.S. Patent No. 6,034,116 (Paper No. 2, page 3). Applicants respectfully traverse this rejection.

The priority of the pending application has been clarified by amendment to the specification.

The prior art does not specifically teach the claimed composition comprising substituted benzimidazoles of formula (I) and at least one active ingredient selected from polyether antibiotics and synthetic coccidiosis agents. Furthermore, the prior art does not teach the claimed compositions wherein said compositions demonstrate up to 100% efficacy (see Tables 1 to 3 of the specification).

Since U.S. Patent No. 6,034,116, does not teach each and every limitation of the claimed invention, a proper rejection under 35 U.S.C. § 102(f) has not been established. Accordingly, Applicants respectfully request reconsideration and withdrawal of the of the present rejection.

Rejection Under 35 U.S.C. § 102 or 35 U.S.C. § 103(a)

The Examiner rejected claims 13-16 and 18 under 35 U.S.C. § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over DE 19519821 (Paper No. 2, page 4). Applicants respectfully traverse.

The prior art document DE 19519821 is the priority document for U.S. Patent No. 6,034,116. As such, the prior art does not specifically teach the claimed composition comprising substituted benzimidazoles of formula (I) and at least one active ingredient selected from polyether antibiotics and synthetic coccidiosis agents. Furthermore, the prior art does not teach the claimed compositions wherein said compositions demonstrate up to 100% efficacy (see Tables 1 to 3 of the specification).

It is therefore respectfully submitted that DE 19519821 does not teach each and every limitation of the claimed invention, a proper rejection under 35 U.S.C. § 102(a) has not been established and DE 19519821 fail to teach or suggest the compositions as presently claimed, and that the current invention is novel and nonobvious in view of the prior art references. For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the present rejection.

Serial No. 10/613,818

Atty. Docket No. AH/LeA 33 017D1

Double Patenting

The Examiner has rejected claims 13-16 and 18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,034,116 (Paper No. 3, pages 3-4).

It remains unknown what subject matter claimed and disclosed in the present application will be deemed allowable; hence any statement regarding this rejection made on Applicants' part would be premature. Therefore, Applicants respectfully traverse this rejection, and request that this rejection should be held in abeyance until subject matter is deemed allowable in this application.

CONCLUSION

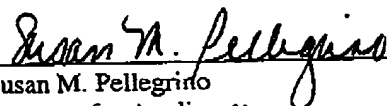
For the foregoing reasons, Applicants submit that the claims are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections and objections, and entry of the amendments. Should there be any further matter requiring consideration, Examiner Levy is invited to contact the undersigned counsel.

If there are any further fees due in connection with the filing of the present reply, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,

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Serial No. 10/613,818

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Amendment to the Specification (Attorney Docket No. AH/LeA 33 017D1)

Please amend the specification by deleting the following paragraph on page 1, line 1 of the specification following the title:

~~This application is a divisional application of United States Patent Application Number 08/952,758, filed November 19, 1997, now U.S. Patent No. 6,034,116.~~

Please amend the specification by inserting this paragraph on page 1, line 1 of the specification following the title:

This application is a divisional application of United States Patent Application Number 09/743,440, filed January 9, 2001, now U.S. Patent No. 6,620,833.